

LEXSEE 2007 U.S. APP. LEXIS 756



Cited

As of: May 27, 2008

**MILLARD WALTON; CAROLYN WALTON, Plaintiffs - Appellants, v.
ALLSTATE INSURANCE COMPANY, Defendant - Appellee.**

No. 04-56774

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

222 Fed. Appx. 544; 2007 U.S. App. LEXIS 756

**December 5, 2006, Argued and Submitted, Pasadena, California
January 10, 2007, Filed**

NOTICE: [**1] PLEASE REFER TO FEDERAL
RULES OF APPELLATE PROCEDURE RULE 32.1
GOVERNING THE CITATION TO UNPUBLISHED
OPINIONS.

PRIOR HISTORY: Appeal from the United States
District Court for the Central District of California. D.C.
No. CV-02-02432-EFS. Edward F. Shea, District Judge,
Presiding.

COUNSEL: For MILLARD WALTON, CAROLYN
WALTON, Plaintiff - Appellant: Jeffrey D. Diamond,
Esq., Woodland Hills, CA.

ALLSTATE INSURANCE COMPANY, Defendant -
Appellee: Peter H. Klee, Esq., John T. Brooks, Esq.,
LUCE FORWARD HAMILTON & SCRIPPS, LLP, San
Diego, CA.

JUDGES: Before: REINHARDT, KOZINSKI and
IKUTA, Circuit Judges.

OPINION

[*544] **MEMORANDUM ***

* This disposition is not appropriate for publica-
tion and is not precedent except as provided by
9th Cir. R. 36-3.

Before: **REINHARDT, KOZINSKI and IKUTA,**
Circuit Judges.

Because plaintiffs' claim arose before they filed their
bankruptcy petition, it is [*545] property of the bank-
ruptcy estate, and plaintiffs lack standing to pursue this
action. [**2] *See 11 U.S.C. § 541; In re Eisen, 31 F.3d*
1447, 1451 n.2 (9th Cir. 1994). Plaintiffs would, how-
ever, gain standing if the bankruptcy trustee were to
abandon the claim. *See Catalano v. C.I.R., 279 F.3d 682,*
685 (9th Cir. 2002); Dunmore v. United States, 358 F.3d
1107, 1112 (9th Cir. 2004). We therefore vacate the
judgment below and remand with instructions that the
district court refer this matter to the bankruptcy court.
The bankruptcy court, in turn, shall determine whether
the trustee of the Waltons' estate wishes to abandon or
assert the claim on behalf of the estate. If the trustee
chooses to abandon the claim, the Waltons shall be enti-
tled to maintain the lawsuit in their own name, subject to
any further objections Allstate may raise before the dis-
trict court.

REMANDED.

